**Before the**
**FEDERAL COMMUNCATIONS COMMISSION**
**Washington, D.C. 20554**



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| **In the Matter of** | ) | |
| | ) | |
| **Implementation of the Pay Telephone** | ) | **CC Docket No. 96-128** |
| **Reclassification and Compensation** | ) | |
| **Provisions of the Telecommunications** | ) | |
| **Act of 1996** | ) | |

## OPPOSITION OF SPRINT TO PETITION FOR RECONSIDERATION

Sprint Corporation opposes the petition of PocketScience, Inc., for reconsideration of the Commission's Third Report and Order and Order on Reconsideration of the Second Report and Order ("Third Order"), released in this proceeding on February 4, 1999.

In the Third Order, the Commission finally abandoned its misconceived "market-based" approach to establishing per-call compensation rates and properly decided that such rates should be based on a bottom-up cost analysis instead. Nonetheless, the Third Order remains seriously flawed. Both in its use of a so-called "marginal" payphone in determining call counts, and its rejection of the bellwether approach to rate setting and its selective use of cost data, the Commission seemed determined to prescribe a per-call rate that is far higher than necessary to cover the actual costs of an efficient payphone service

provider (PSP). Rather than seeking reconsideration, Sprint and MCI WorldCom, with the support of the rest of the long distance industry, are appealing the Third Order directly in the Court of Appeals.[1] In the meantime, the arguments raised by PocketScience are, for the reasons discussed below, without merit and should be rejected promptly.

**A. Rates That Vary With The Volume Of Calls**

PocketScience argues (2-5) that since not all payphones handle the same number of calls, high volume payphones will generate excessive compensation, while under-utilized payphones will not cover their costs. PocketScience proposes instead that the amount of compensation should vary with the actual number of calls placed from the payphone.

PocketScience comes close to, but does not quite reach, one of the fundamental flaws in the Third Order: the Commission's determination to base the per-call rate on the number of calls made from an alleged "marginal" payphone (¶141). That approach is misconceived, because it results in overcompensating the rest of the universe of payphones simply in order to make the "marginal" payphone profitable. However, the solution is not to vary the compensation rate based on the number of calls from particular payphones as PocketScience proposes, but instead to base the rate on the costs of an efficient payphone service provider, divided by the average utilization achieved by that provider. An efficient provider will not place a phone at all unless there is a reasonable prospect that it will generate a profitable number of calls. While, inevitably, many phones will have below-average call volumes, just as many will generate above-average

[1] American Public Communications Council v. FCC, CADC No. 99-1114 and consolidated cases. Petitioners' briefs were filed June 24, 1999.

volumes, basing the per-call compensation rate on the average call volume will ensure that, overall, an efficient provider would be fully compensated for its payphone costs – the "excess" compensation generated from phones that have above-average call volumes will offset the deficiencies from phones with below-average volumes. To vary the compensation rate by the number of calls each payphone actually generates, however, would give PSPs perverse incentives and result in inefficient placement of payphones. If the PSPs knew that dial-around compensation would fully cover the costs of the payphone, no matter how few calls are placed, they would have no incentive to ensure that payphones are placed only in locations where they can be expected to generate a reasonable degree of utilization. The total number of payphones would increase to inefficient levels, and the costs PocketScience and others would have to bear would increase exponentially. In any event, PocketScience's proposal would be administratively unworkable, since no single payor would know the total number of compensable calls generated by a particular payphone.

**B. Duration-Based Compensation**

PocketScience (at 5-9) next faults the Commission for setting compensation on the basis of a rate per-call rather than a rate per-minute. However, PocketScience largely ignores the Commission's extensive findings (in ¶97) that the costs of short duration calls are not appreciably less than those of long duration calls. The Commission is also entirely correct in accepting the arguments of APCC and AT&T (¶98) that a duration based approach would result in added expense and delay. Although Sprint and other long

distance carriers measure call duration for billing purposes, they utilize different systems for tracking per-call compensation and built those systems around the per-call concept that has been the basis for payphone compensation since the first order in this proceeding. Sprint could not track compensable calls on a duration basis without time-consuming and expensive modifications to its call tracking systems. In view of the Commission's findings that there are no significant cost differences between short and long duration calls, these expenditures would clearly be wasteful. In short, the Commission's reasons for rejecting PocketScience's proposal in the Third Order are entirely sound and PocketScience has shown no error in the Commission's reasoning.

**C. Internet Access**

Finally, PocketScience (at 9-11) states that it provides e-mail service through hand held devices that can permit their users to send and receive email by calling an 800 number, and argues that by imposing payphone compensation on 800 calls, that, in turn, IXCs pass on to their 800 subscribers, the Commission is acting inconsistently with its promise not to impose dial-up charges on Internet access. The promise to which PocketScience refers, however, relates to the access charge exemption for ESPs. By its logic, even having to pay toll free usage charges could constitute an "improper" dial-up charge for using the Internet. If PocketScience chooses to market a technology that requires the use of 800 access, rather than the local phone lines that are the subject of the ESP exemption, it should be prepared to pay the rates associated with this service.

Manifestly, there is no merit to PocketScience's argument, and it should be summarily rejected.

Respectfully submitted,

SPRINT CORPORATION

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June 30, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document in CC Docket No. 96-128 was Hand Delivered or sent by United States first-class mail, postage prepaid, on this the 30th day of June, 1999 to the parties listed below.

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